

GAO

United States General Accounting Office

Report to the Chairman, Committee on
Governmental Affairs, U.S. Senate

March 1992

TAX SYSTEMS MODERNIZATION

IRS Award to MITRE Corporation Violated the Competition in Contracting Act



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Information Management and
Technology Division

B-247114

March 12, 1992

The Honorable John Glenn
Chairman, Committee on
Governmental Affairs
United States Senate

Dear Mr. Chairman:

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This report responds to your request that we review the Internal Revenue Service's (IRS) May 1990 contract for \$4.5 million with the MITRE Corporation for engineering services to design the Tax Systems Modernization (TSM) program. As you know, the ability of IRS to direct and control its procurement activities is critically important to the success of the TSM program. Our objective was to determine if the noncompetitive contract award to MITRE complied with requirements of the Competition in Contracting Act (CICA) concerning contracts awarded with less than full and open competition. Details of our objective, scope, and methodology appear in appendix I.

Results in Brief

IRS violated CICA in making its noncompetitive award to MITRE in May 1990. CICA does not allow agencies to justify contracting without full and open competition on the basis of a lack of advance planning. This was the case with the MITRE award. IRS knew at least as early as February 1989 that the existing contractual arrangement with MITRE likely would not continue past April 1990. IRS should have known that if it was to avoid a disruption in the planning for TSM, it would need to find another way to obtain the engineering services being provided by MITRE beyond that date. However, the agency took no action to address the need to acquire interim engineering services until November 1989. Even then, IRS focused its efforts on justifying a sole-source award to MITRE, although at least one other firm was capable of providing the required services. The noncompetitive award to MITRE might have been avoided had IRS conducted timely advance planning.

Background

The objective of TSM is to replace IRS' current antiquated tax processing system with a new system using modern technology. Design work on TSM began in 1986, and several major procurements are underway. According to IRS, the modernization will cost \$8 billion through 2008.

DTIC QUALITY INSPECTED /

In February 1987, IRS and the General Services Administration (GSA) signed an interagency agreement that called for GSA's Office of Technical Assistance to furnish IRS with technical support services for the modernization. Most of the services were performed by MITRE, which was under contract to GSA to provide such services for other federal agencies.

MITRE began working on various TSM task orders in March 1987. Most of MITRE's initial work was devoted to developing a systems architecture. IRS' systems architecture is a blueprint that describes the way the agency intends to do business in the 21st century and the physical environment—computers, storage devices, software, telecommunications, and other system components—that will support these business methods. MITRE's contract with GSA expired on September 30, 1988, but MITRE continued working to complete TSM tasks that had been ordered before that date. This work was to have been finished by April 1990.

In order to retain MITRE's engineering services for additional TSM tasks, IRS noncompetitively awarded MITRE a 1-year, \$4.5 million contract in May 1990. IRS justified contracting without full and open competition on the basis that its need for the services was urgent. This contract called for developing an administrative systems architecture and a security architecture, both of which were to be incorporated in the overall systems architecture that MITRE had been working on, and a design master plan. The design master plan was to serve as the "road map" for the modernization and to contain the master schedule for implementing the systems architecture, plans for moving from the current architecture to the new TSM architecture, a description of planned acquisition activities, and economic analyses.

In May 1991, IRS noncompetitively awarded another contract to MITRE to revise and update the design master plan and systems architecture and provide a variety of other engineering support services related to TSM. IRS justified this award on the basis that MITRE was the sole responsible source for the services to be provided because it had been performing tasks in support of TSM for the previous 4 years. Again, the contract was for a 1-year period, but with options for three additional 1-year extensions. This contract is valued at about \$20 million, including all option years. Given the extent of MITRE's involvement with the development of TSM and the advanced state of that development, we believe that by May 1991 MITRE indeed had become the only source that could provide the required services within the time available.

IRS Should Have Begun Competitive Procurement Procedures More Promptly

CICA states that in no case may an agency justify contracting without full and open competition on the basis of a lack of advance planning. In making its May 1990 award to MITRE, IRS violated CICA because the agency should have acted in a more timely fashion to begin procurement planning after it became aware that (1) GSA would likely not renew its contract with MITRE, and (2) its plan to competitively award a long-term engineering services contract could not be carried out in time to avoid awarding an interim contract for engineering services.

As a general rule, CICA requires agencies to award contracts based on full and open competition. Competition helps ensure that the government pays fair and reasonable prices; it provides a means to choose the best solution available to meet a particular need. Further, it allows contractors equal opportunity to compete for government business. CICA provides, however, that competition need not be full and open when an agency's need for supplies or services is of such unusual and compelling urgency that the government would be seriously injured unless the agency were permitted to limit the number of sources from which it solicits bids or proposals.

In justifying the award to MITRE in May 1990, IRS cited unusual and compelling urgency as the basis for avoiding full and open competition. IRS believed there was insufficient time to conduct a competition before MITRE was scheduled to complete its work in April 1990. According to IRS, using more time-consuming competitive procurement practices would have seriously delayed the overall TSM effort. Also, IRS wanted to complete the design master plan and deliver it to external reviewers, such as congressional committees, by September 1990. IRS believed that conducting a competition would not allow this schedule to be met.

This urgency, however, resulted from IRS' failure to conduct timely advance planning. According to IRS' justification for the noncompetitive award, it was not notified by GSA until October 1989 that GSA would not renew its contract with MITRE. While GSA did not provide IRS written notification of this decision until October 18, 1989, officials from both agencies told us that GSA informed IRS at a February 1989 meeting that GSA probably would not negotiate a new contract with MITRE and that consequently IRS would not be able to count on obtaining MITRE's services for any additional work.

According to IRS officials, the agency did not begin procurement planning in February 1989 because it believed that it could persuade GSA to

negotiate a new contract with MITRE. In our view, this does not justify IRS' failure to conduct timely advance planning.

In February 1989, IRS knew that the GSA contract with MITRE had expired on September 30, 1988. IRS also knew that GSA believed that the most appropriate use of MITRE was for technical assistance with procurement sensitive tasks, such as evaluating proposals. GSA had informed IRS that other vendors were available for all other technical assistance. Under these circumstances, we believe that after the February 1989 meeting it was unrealistic for IRS to continue to believe that it could convince GSA to support the use of MITRE as the primary source of technical support for TSM.

IRS also knew in February 1989 that a plan it developed in 1988 to competitively award a long-term contract for engineering services by November 1989 to replace MITRE's services could not be carried out on schedule. The first step in initiating a procurement—submitting a requirements analysis package and request for procurement authority to the Department of the Treasury—had been delayed from August 1988 to March 1989. Treasury did not grant IRS approval to conduct the procurement until July 1989. Because of these delays, IRS knew that the contract—known as the Integration Support Contract (ISC)—could not be awarded until September or October 1990 at the earliest and that an interim contract for engineering services would be needed to continue work on the systems architecture and the design master plan.¹

In November 1989, IRS finally began the procurement process for an interim contract by announcing in the Commerce Business Daily, a Department of Commerce list of federal procurement opportunities, that it planned such a contract and solicited expressions of interest from potentially qualified sources. Seven firms responded, and IRS determined preliminarily that one firm, in addition to MITRE, was capable of providing the required services. Instead of soliciting formal proposals, however, the agency decided that there was not enough time to follow competitive procurement procedures and justified the award to MITRE on the basis of unusual and compelling urgency.² It believed it could not conduct a competition and award a contract by the time MITRE was scheduled to complete its work in April 1990.

¹The ISC, valued at \$300 million, was finally awarded to TRW in December 1991. The contract was competitively awarded.

²MITRE is prohibited by its charter from competing for contracts.

We cannot determine with certainty whether IRS could have completed competitive procurement procedures had it started in February 1989. However, by not planning or otherwise starting the procurement in the 9 months between February 1989 and November 1989, IRS effectively eliminated the opportunity these months would have provided to make an award in accordance with CICA by April 1990.

IRS originally planned to replace the services being provided by MITRE with just the ISC. However, in mid-1990, IRS decided that it also wanted to establish a Federally Funded Research and Development Center for the sole purpose of conducting research and providing advice on technical aspects of TSM.³ IRS wants such a relationship because it believes it needs advice that is free from actual or potential conflicts of interest. IRS intends to use the Center to assess new and emerging data processing technologies, provide advice on strategic plans and designs for TSM, and assist IRS in the acquisition of TSM components. IRS plans to use the Center in conjunction with the ISC to supply engineering services for TSM. Once a relationship with the Center has been established, IRS plans to discontinue using its current sole-source contract with MITRE, which it still views as an interim arrangement, even though it can be continued through May 1995. The schedule for establishing a relationship with the Center has slipped from March to September 1992 and, according to IRS, this date may be "overly optimistic."

Conclusions

IRS violated CICA in awarding a contract to MITRE in May 1990 because planning to obtain competition on the MITRE contract should have been started earlier. By February 1989, IRS knew that GSA's contract with MITRE would probably not be renewed. IRS also knew in February 1989 that its long-range plan to obtain most of the services then being provided by MITRE by awarding the ISC had slipped by at least 1 year. Had IRS conducted timely advance planning, the noncompetitive award to MITRE might have been avoided. Further, by making this award IRS effectively put itself into a sole-source relationship with MITRE that resulted in a second, and potentially much larger, noncompetitive award.

³A Federally Funded Research and Development Center is an organization that is privately operated, sponsored by a federal agency, and financed primarily by the government to meet some special, long-term research or development need that cannot be met as effectively by existing in-house or contractor resources. Centers are expected to operate in the public interest and to be free from organizational conflicts of interest. Centers may not compete with private sector firms for government contracts, but may be allowed to accept work from nonsponsoring agencies. In such cases, the nonsponsoring agency is responsible for compliance with the regulations concerning competition requirements.

Even though the May 1990 award to MITRE did not comply with CICA, a legally binding contract between IRS and MITRE was formed. That contract has been fully performed. IRS intends to discontinue its current sole-source contract with MITRE after it establishes a relationship with the Federally Funded Research and Development Center in September 1992; for these reasons, we are not making a recommendation regarding either of the MITRE contracts.

Agency Comments and Our Evaluation

On February 3, 1992, IRS provided us with written comments on a draft of this report. IRS disagreed with our overall conclusion that the May 1990 award to MITRE violated CICA, and also disagreed with our statements that (1) IRS knew as early as February 1989 that the existing contractual arrangement with MITRE would likely not continue past April 1990, (2) the agency took no action to address the need to replace the services being provided by MITRE until November 1989, and (3) the noncompetitive award to MITRE might have been avoided had IRS conducted timely advance planning.

With respect to the first issue, IRS has not presented any new information to dispute our statement concerning IRS' awareness in February 1989 that the MITRE contract would likely not be continued. While we agree that GSA, in the February 1989 meeting, may not have categorically ruled out renewing the MITRE contract, we believe that IRS had enough information to strongly suggest that it would be prudent to begin action to competitively procure interim engineering services in February, instead of waiting, as it did, until November 1989. This information included a knowledge that (1) the GSA contract with MITRE had already expired 4 months previously in September 1988; (2) GSA viewed use of MITRE as appropriate primarily for procurement sensitive tasks and that other GSA vendors were available for other technical assistance; and (3) IRS' plans to award a long-term engineering services contract were well behind schedule, necessitating the procurement of interim engineering services.

With respect to the second and third issues raised by IRS, the agency pointed out that it did considerable advance planning for the competitively awarded, long-term Integration Support Contract and that this planning began as early as 1987. However, our statements are not directed to the planning done for this long-term contract, which we agree began in 1987. Rather, they apply to the "interim engineering services" contract that was awarded to MITRE and which became necessary when the Integration Support Contract fell behind schedule. We have slightly modified these

statements in the report to make clear that they apply to the interim engineering services contract that was noncompetitively awarded to MITRE, rather than the Integration Support Contract that was competitively awarded to TRW.

IRS' written comments (without attachments) and our additional responses are contained in appendix II.

We performed our review between July 1991 and February 1992, in accordance with generally accepted government auditing standards. As agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the date of this letter. We will then send copies to the Secretary of the Treasury; the Commissioner of Internal Revenue; the Director, Office of Management and Budget; and interested congressional committees. Copies will also be made available to others upon request. This report was prepared under the direction of Howard G. Rhile, Director, General Government Information Systems, who can be reached at (202) 336-6418. Other major contributors are listed in appendix II.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Ralph V. Carlone". The signature is fluid and cursive, with the first name "Ralph" being more prominent.

Ralph V. Carlone
Assistant Comptroller General

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Abbreviations

CICA	Competition in Contracting Act
GAO	General Accounting Office
GSA	General Services Administration
IMTEC	Information Management and Technology Division
IRS	Internal Revenue Service
ISC	Integration Support Contract
TSM	Tax Systems Modernization

Objective, Scope, and Methodology

We reviewed IRS' May 1990 noncompetitive award of an engineering services contract to the MITRE Corporation. Our objective was to determine whether this award complied with requirements of the Competition in Contracting Act (CICA) concerning contracts awarded with less than full and open competition.

To determine whether IRS' award to MITRE violated CICA, we analyzed documents in IRS' and GSA's files pertaining to the interagency agreement between IRS and GSA. These documents included GSA's contract with MITRE, the interagency agreement between IRS and GSA, task orders, work statements, correspondence, and internal issue papers. We also reviewed files pertaining to the noncompetitive contracts IRS awarded to MITRE in May 1990 and May 1991, including the justifications for the awards and the statements of work. We interviewed IRS and GSA officials responsible for managing MITRE's activities, as well as contracting officials.

We performed our work at IRS headquarters in Washington, D.C., and at IRS and GSA locations in Falls Church, Virginia.

Comments From the Internal Revenue Service

Note: GAO comments supplementing those in the report text appear at the end of this appendix.



DEPUTY COMMISSIONER

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

FEB - 3 1992

Mr. Ralph V. Carlone
Assistant Comptroller General
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Dear Mr. Carlone:

Thank you for the opportunity to review your recent draft report entitled, "Tax Systems Modernization: IRS Award to MITRE Corporation Violated the Competition in Contracting Act" (IMTEC-92-28). As Commissioner Goldberg testified at the June 25, 1991 Senate Governmental Affairs Committee hearing, the IRS position is that it made reasonable procurement judgements given the situation when these decisions were made. In no way should these judgements be construed to be a violation of law. The GAO offers a different judgement based on its perception of the then situation.

We have the following comments regarding the draft report.

Issue 1: The IRS does not agree that: "IRS knew at least as early as February 1989 that the existing contractual arrangement with MITRE likely would not continue past April 1990".

A. According to IRS attendees at the February 1989 meeting, (including Mr. Fred Thompson, Assistant Division Director, Systems Acquisitions Division), the IRS was informed that GSA had submitted an extension of the MITRE contract to GAO's contracting office for review and approval. The GSA Contracting Officer's Technical Representative raised questions and was investigating whether the civilian division of The MITRE Corporation was qualified to function as a Federally Funded Research & Development Center. In the IRS' view, at that meeting the GSA did not establish that there would be no further contractual arrangements with The MITRE Corporation.

B. Evidence of continuing efforts by Federal Systems Integration & Management Center (FEDSIM) to renew its contract with MITRE appears in the document titled: "Requirements Analysis Package for Acquisition of Interim Integration Support Services for Information Systems Modernization" (dated March 1990) wherein the following facts were stated:

See comment 1.

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"The contract between MITRE and GSA expired in September 1988. The Service was informed that Federal Systems Integration & Management Center (FEDSIM) was negotiating with MITRE, and MITRE work was allowed to continue through a series of extensions granted by GSA. During this time the Service has had many meetings with FEDSIM and after a long process received a definitive answer in a letter dated October 19, 1989 that there would be no new agreement between FEDSIM and MITRE, and no further extensions. The Service issued a "sources sought" announcement in the Commerce Business Daily (CBD) and although there are possible sources identified, none could be in place and deliver the required products by September 1990."

C. Additional evidence of IRS' belief that services from MITRE could be obtained from FEDSIM involved what was happening with other agencies. Within the same time frame, FEDSIM did continue to contract with The MITRE Corporation's civilian division. Attachment 1, GSA's CBD announcement, announces GSA's and FEDSIM's intent to negotiate on a sole source basis with The MITRE Corporation, McLean, Virginia for the Social Security Administration.

D. IRS considered it a prudent business decision to aggressively pursue using existing contractual vehicles, such as the Office of Technical Assistance (OTA) interagency agreements, to acquire support services before initiating an expensive, time-consuming separate procurement. This was particularly true for interim systems engineering services. The GSA master contract provided the type of independence and security for procurement sensitive data the IRS required.

Issue 2: The IRS disagrees with the implication and the statement that "...the agency took no action to address this need until November 1989."

A. As early as May 1988, the IRS, in fact, was well along the way in pursuing a competitive procurement, the Integration Support Contract (ISC), for engineering services. The use of the word "Interim" in the title of the contract with The MITRE Corporation, (The Interim Engineering Support Services Contract (dated May 1990)), reflected the temporary nature of that contract while the IRS continued efforts to obtain the ISC through a competitive procurement.

See comment 2.

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B. Even if the IRS had begun a competitive procurement for interim engineering services in February 1989 we would seriously question whether the procurement could reasonably have been expected to be completed before April 1990. The IRS would have suffered a severe interruption in its Tax Systems Modernization effort had engineering services not been available.

See comment 3.

Issue 3: The IRS disagrees with the statement: "The noncompetitive award to MITRE might have been avoided had IRS conducted timely advance planning."

A. As early as 1987, the IRS was coordinating with Treasury regarding procuring the services of a commercial integrator. The Integration Support Contract acquisition project was chartered on May 17, 1988. Attachment 2 includes a copy of a memorandum approving the Delegation of Procurement Authority (DPA) for the ISC (dated July 1989), the Agency Procurement Request (dated March 1989), and the CBD announcement dated December 1989. Timely and intense advance planning was conducted by the IRS. The IRS was exercising diligence in pursuing a long term integration services contract even before hearing informally from GSA (February 1989) that a continuing relationship with MITRE might be in jeopardy. The IRS has successfully completed the ISC procurement and successfully awarded the ISC contract without protest to TRW Inc. in December 1991. The process of transitioning tasks from MITRE to the ISC has already begun.

B. When the MITRE contract was let, the IRS reduced the impact of the sole source nature of the procurement by removing from the Statement of Work project level tasks that could be acquired reasonably elsewhere. Attachment 3 lists tasks referred to other contractors through FEDSIM. Other examples are: Configuration Management tasks that went to Cincinnati Bell Information Systems (CBIS) and to Information Engineering and Training Consultants; project modelling for Automated Criminal Investigation that went to CBIS; and, Reverse Engineering tasks went to CBIS and to Booz Allen Hamilton. IRS felt strongly that remaining tasks should be performed by a non-proprietary vendor (The MITRE Corporation) so as to ensure objectivity in the overall design and therefore not prejudice future procurements.

We continue to believe the IRS properly awarded the sole source contract to The MITRE Corporation because of the unusual and compelling circumstances in which the IRS found itself.

Appendix II
Comments From the Internal Revenue Service

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Mr. Ralph V. Carlone

Based on the above, we believe that GAO should reconsider the conclusions of the subject report. Although we do not agree with all of the findings and conclusions, we recognize the importance and benefits of the oversight process.

Best regards.

Sincerely,


Michael J. Murphy
Deputy Commissioner

Enclosure

GAO Comments

1. The additional information provided by IRS does not contradict the statement that IRS knew in February 1989 that GSA would probably not negotiate a new contract with MITRE. Neither GSA nor IRS officials were able to provide us with documentation of the February or any subsequent meetings at which this topic may have been discussed, so essentially we had to rely on officials' recollections of the discussions. However, both IRS and GSA officials agree that in February 1989 GSA verbally informed IRS that the MITRE contract would probably not be renewed. As stated in our report, we believe that because (1) IRS knew at that time that GSA's contract with MITRE had expired in September 1988 and (2) GSA had informed IRS that use of MITRE should be limited to certain procurement sensitive tasks, it was unrealistic for IRS to (1) believe that it could convince GSA to support the use of MITRE as the primary source of technical assistance for the Tax Systems Modernization program and (2) take no concrete action to address the possibility that GSA could not be so convinced.

2. The need that we referred to in this statement is the need to procure interim engineering services to bridge the gap between the end of MITRE's work effort under the GSA contract and the date when the Integration Support Contract would be awarded and available to replace MITRE. This is evident from reading pages 3 through 5 of our report. IRS provided no new information that suggested it began action to procure interim engineering services before November 1989. With respect to the Integration Support Contract, we agree that IRS began planning this procurement in 1987. However, that is not the issue. The issue is that IRS knew in early 1989 that it would need interim engineering services because the Integration Support Contract would not be awarded until the fall of 1990, but it took no action to address that need until November 1989.

3. Again, IRS has incorrectly concluded that our statement refers to the long-term Integration Support Contract rather than the interim engineering services contract that was awarded to MITRE. See our comments above.

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